

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

**CIVIL DOCKET NUMBER:**

**IN RE: JOHNSON & JOHNSON  
TALCUM POWDER PRODUCTS  
MARKETING, SALES PRACTICES  
AND PRODUCTS LIABILITY  
LITIGATION**

**3:16-md-2738-FLW-LHG**

**STATUS CONFERENCE VIA  
REMOTE ZOOM VIDEOCONFERENCE**

Clarkson S. Fisher Building & U.S. Courthouse  
402 East State Street  
Trenton, New Jersey 08608  
November 17, 2020  
Commencing at 2:00 p.m.

**B E F O R E:**

**THE HONORABLE FREDA L. WOLFSON,  
CHIEF UNITED STATES DISTRICT JUDGE**

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Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

**A P P E A R A N C E S (Continued) :**

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1 (PROCEEDINGS held via remote Zoom videoconference  
2 before The Honorable Freda L. Wolfson, Chief United States  
3 District Judge, at 2:00 p.m.)

4 THE COURT: As people are being admitted, let me just  
5 say the following: If you're not going to be speaking, turn  
6 off your video so I will only see the people who will actually  
7 be participating in the hearing. Okay? And that will help.  
8 Lots of people are disappearing now. That helps.

9 Let me know when on your side you think you see  
10 everyone that is going to be participating both on plaintiffs'  
11 and defense side. I see Ms. Sharko, I see Mr. Beisner,  
12 Mr. Placitella, I see Ms. Brennan, Ms. O'Dell, Ms. Parfitt.  
13 Okay. Do I have everybody on my first screen pretty much  
14 that's participating? And I see Mr. Locke, okay, on the other  
15 screen.

16 Okay. So let me begin. It's good to see everyone.  
17 I hope that means that you've all been healthy and well and,  
18 hopefully, your families as well that are here. That's great.

19 So, let me start too by introducing, you'll see on  
20 the screen, it says, "Carol Farrell, Official Court Reporter."  
21 The pandemic -- Vinnie was not ill, but he had no desire to  
22 come back when the pandemic hit so Vinnie is finally retired,  
23 and Carol is my new court reporter. She's an ace, terrific,  
24 and we have been doing this for about three months, including  
25 a virtual bench trial for six days, and so we have got this

1 down pat. So Carol is now your point of contact for Official  
2 Court Reporter. Okay? So that's who you see on the screen.

3 Okay. I could see by reading your status report,  
4 there is not much that you want to discuss with me today. I'm  
5 thinking the reason why now we are having this status is you  
6 all felt guilty that you thought perhaps you were ignoring me  
7 because every time I scheduled one of these, you said we  
8 didn't need it. It's okay. My feelings are not hurt if we  
9 don't need one of these and you think we need to adjourn it,  
10 but we're here so we might as well talk for a few moments.

11 It appears, however, that most of the things that  
12 you're raising or that are still issues are things that you're  
13 bringing up to Judge Pisano; is that correct?

14 MS. SHARKO: Yes.

15 MS. PARFITT: Yes.

16 THE COURT: Okay. And those include, I guess, issues  
17 about depositions of defendants, right, and various other  
18 things that you're dealing with. So I don't know that any of  
19 this is for me.

20 Is there anything you want to actually bring to my  
21 attention today that is in or not in your status letter?

22 MS. PARFITT: Your Honor, if I may, this is Michelle,  
23 and good afternoon. How are you?

24 THE COURT: Good. Thank you.

25 MS. PARFITT: Good, good.

1           Perhaps just one issue. And the status report has  
2       reported as to the stage -- or excuse me -- these motions to  
3       dismiss. There are some changes. Even as of last week, there  
4       have been some firms who have completed the forms timely,  
5       curing any deficiencies, and so the status report as submitted  
6       to Your Honor needs some amending. Again, we can take care of  
7       that. We certainly don't need to waste the Court's time. But  
8       I just didn't want -- since the document has been filed and  
9       there was an attachment by Ms. Brennan representing that there  
10      were several cases, that there was an unopposed motion, some  
11      of that has changed in light of the fact that deficiencies  
12      have indeed been cured.

13           So what we can do is we can -- I just didn't want the  
14      Court to start ruling without acknowledging that there are  
15      some additions and some amendments to the status report, and  
16      that's the status of pending motions to dismiss.

17           THE COURT: Right.

18           MS. PARFITT: All with you. So I can identify --

19           THE COURT: I notice, though, the first five are  
20      still being listed -- excuse me, I'm sorry. You cut in, cut  
21      out on that.

22           MS. PARFITT: Yes. I can identify what firms and  
23      what cases or we can just take that up with defendants after  
24      this. These have been rolling in over the course of the last  
25      few weeks where people have, in good faith, been making the

1 necessary and receiving the necessary medical records that  
2 they had hoped to receive or completion of reports or estates  
3 being set up. So it doesn't involve probably more than eight  
4 cases, but, again, I just didn't want the Court to start to  
5 rule that there was no lack of opposition. In some cases,  
6 where the sheet has indicated "not opposed," it is indeed  
7 opposed because it's -- the deficiency has been corrected.

8 LAW CLERK FANG: Judge, those motions were not part  
9 of that status letter.

10 THE COURT: No, they weren't in the status letter  
11 that I got. They weren't attached. That's the voice of  
12 Wayne, who refuses to let himself be seen on Zoom most of the  
13 time, so he is there in the background, but, I mean, I guess  
14 he didn't have time to do his hair or something.

15 MS. PARFITT: What we could do is we can just see  
16 whether there is going to be any opposition. We could talk to  
17 J&J and see if they have any concerns about the eight cases  
18 that, frankly, I think they have remedied their situation or  
19 there is a very good reason why they can't do --

20 THE COURT: Okay. Why don't you do that, and then  
21 send a joint letter to us about them, and I'll know which ones  
22 are no longer there.

23 I also, on the exhibit we got, which was Exhibit A, I  
24 think the first five are listed again but they were terminated  
25 pursuant to the CMO 8 so I don't think they should keep

1 getting listed.

2 And I can tell you that a couple of these, just  
3 trying to give you some timelines, for instance, the Bathon  
4 case and the Denwiddie case, those should be completed by the  
5 end of December, so in the next month and a half; and just  
6 trying to get to these, in the midst of everything else, as  
7 quickly as we can. Some of them were just recently obviously  
8 fully briefed, but they'll get our attention. But those two,  
9 at least, I think if you want to look at a timeline, you can  
10 talk about by the end of December. Okay?

11 What else? Is there anything else we need to discuss  
12 while we're here today? Yes, Chris Placitella, yes.

13 MR. PLACITELLA: Good morning -- good afternoon, Your  
14 Honor.

15 THE COURT: Good afternoon.

16 MR. PLACITELLA: If it would be proper, could someone  
17 give me Vinnie's contact information so I can drop him a note?

18 And I want to comment on Mr. Locke's guitar in the  
19 back. I played that in 8th grade. But that's it. Thank you.

20 THE COURTROOM DEPUTY: I'll send you an e-mail.

21 THE COURT: Okay. Jackie is going to send you an  
22 e-mail, Chris, okay?

23 MR. PLACITELLA: (Nods head.)

24 THE COURT: Yes. And, frankly, I think what really  
25 did him in -- it wasn't just the pandemic -- but when he saw

1 that I was actually going to go forward and do a patent trial  
2 and have three *Markman* hearings in the fall, that was enough.  
3 That schedule just -- that was it for him. So, anyway, but  
4 we're good. He's doing well, though. So we wish him well in  
5 his retirement.

6 But you'll all be very, very happy with Carol; tons  
7 of experience, and she is very tech savvy, so she really has  
8 gotten us through this time very, very well. Okay.

9 And I take it that whatever depositions and things  
10 you're doing, you're doing them virtually, right?

11 MS. SHARKO: We should be, Your Honor.

12 MS. PARFITT: There is one issue with regard to that,  
13 if we may. And, Leigh, you perhaps want to address this since  
14 your firm has had some experience with regard to that, in  
15 particular.

16 Your Honor, they are being done virtual at this point  
17 in time. We are, however, asking defendants with regard to  
18 certain plaintiffs, who may not be tech-savvy themselves, may  
19 need to -- and socially distance can be practiced. The firms  
20 can get to someone's house, meaning the plaintiff can get to  
21 the client's home safely [audio distortion] and be there --

22 THE COURT: By the way, if anyone is not speaking,  
23 mute, so we don't get that background noise. Only whoever is  
24 speaking please be off mute. Thank you.

25 MS. PARFITT: Thank you, Your Honor. I appreciate



1 that. I'm not sure what you heard and what you didn't.

2 THE COURT: You said something about some of the  
3 plaintiffs and wanting to do it at someone's home.

4 MS. PARFITT: The plaintiffs' depositions are being  
5 done necessarily at their home, most of them being ill, and  
6 there are certain cases where a plaintiff's attorney can get  
7 to their home, can remain in their home, be socially  
8 distanced, take the appropriate precautions, be there to help  
9 with either technology or to be there with their client. That  
10 individual will remain on camera, and that individual, the  
11 attorney -- so his or her actions would be observed by the  
12 defendants. There would be no assist or anything that would  
13 be a claim that they might be interfering with the process.

14 There has been some opposition to that as of late  
15 because, as you could imagine, these depositions are starting.  
16 They're being scheduled as recently as starting the beginning  
17 of next month, and they're going to continue through January,  
18 so that we do complete all the plaintiffs' depositions. But  
19 there seems to be some -- some issue with regard to whether or  
20 not the plaintiff's attorney can be there.

21 And, Leigh, if you can speak to that, having brought  
22 that to Judge Pisano's attention.

23 MS. O'DELL: Yes, Your Honor. We have had a few  
24 situations like that where the plaintiff was quite close to  
25 the firm, and our firm in particular, and we have been able to

1 drive there, to adhere to all the safety guidelines, but yet  
2 the plaintiff was not in a position to really handle the  
3 technology or to participate. And so, for those situations,  
4 where a plaintiff would be allowed to -- would like their  
5 lawyer to be there, you can do that while adhering to all of  
6 the safety guidelines, while being on video, as Ms. Parfitt  
7 has mentioned. We would like that opportunity to be available  
8 to plaintiffs. It's a very stressful situation for a  
9 plaintiff to be put up for a deposition, to be doing that on  
10 their own, with technology to navigate as well. It's very  
11 challenging.

12 So if there is a situation where a lawyer would have  
13 to fly or they could not adhere to the safety guidelines, we  
14 are not advocating that. Only in those situations where they  
15 would be able to follow state law and participate without  
16 putting anyone at risk.

17 MS. SHARKO: So we brought two or three of these  
18 issues to Judge Pisano for ruling. They involved *in extremis*  
19 plaintiffs, which are different in many respects from the  
20 discovery depositions of the pool plaintiffs about which we're  
21 starting to embark.

22 We feel very strongly that everybody should be on the  
23 same playing field, and the depositions should go forward with  
24 everybody remote, for a variety of reasons.

25 And I think in the 30 pool plaintiffs, maybe three of

1   them, three lawyers, have suggested -- or four lawyers -- that  
2   they want to be in the room, with the plaintiff's lawyer, and  
3   I wrote back to each of them explaining why we objected to  
4   that. I haven't heard from any of them yet, but if they don't  
5   agree with our position, then I think we'll be prepared to  
6   take that to Judge Pisano again.

7           They involve different states with different  
8   quarantine rules. And there's -- Zoom depositions work well.  
9   We've all been doing this for many months now. And we think  
10   it's just not fair to have the plaintiff's lawyer in the room  
11   and the defense lawyer not there, and now we have the added  
12   issue of people wearing masks and how that impacts the sound  
13   quality, et cetera.

14           So, if we can't work out the discovery issues, we'll  
15   take them to Judge Pisano. Judge Pisano was very clear, in  
16   addressing the two or three *in extremis* cases, that his  
17   rulings were not precedential; they were limited to the  
18   specific facts of the cases and lawyers involved. I don't  
19   think there is an issue yet.

20           THE COURT: All right. Well then, I'll let Judge  
21   Pisano handle it.

22           I will say some of my experience, because we've now  
23   been doing this for awhile as well, but particularly in the  
24   criminal area, I have defendants who, let's say, are not in  
25   custody, and we are doing this, and I haven't had any issue.

1 Even at worst, they get on their phones. They all know how to  
2 use a phone and they're able to connect, and we've seen them.

3 So determine if it's really an issue you want to  
4 present to Judge Pisano. Because, as I said, some of these  
5 defendants, I mean, we're talking about individuals who don't  
6 own computers, who -- well, I need not go there, I mean, some  
7 of them. But they all know how to get on their phone, and  
8 it's worked well. We've had no issues with them. Right,  
9 Carol? Yes.

10 And so I leave it to Judge Pisano. I don't want to  
11 step on anyone's toes here. You can present it to him. But  
12 there are ways of dealing with this.

13 I have found certainly that not wearing a mask is  
14 good for these things. And if someone has got to be present  
15 with someone, I don't see any way around it. You're going to  
16 have to wear masks, if you're in the same room with someone.  
17 I don't care if it's six feet -- I don't know what it is  
18 anymore. I don't know that anyone really knows. And from  
19 those kinds of safety perspectives, particularly if you might  
20 have someone who is not well, suffering in some way or have  
21 underlying conditions, I wouldn't particularly want to put  
22 someone in the same room.

23 And I can tell you those of my defendants who are not  
24 in custody, for instance, they're not going to their lawyer's  
25 office to do their plea or their sentencing. They're doing

1 them in different locations. I've even had some defendants  
2 who have done them, they're working, and they go to some room  
3 in their workplace and put their phone on and do it, and it's  
4 been wild, I mean, how it works. But that's it. Those are  
5 just some comments, but I'll let Judge Pisano handle it.  
6 Okay?

7 All right. But --

8 MS. O'DELL: Thank you, Your Honor.

9 THE COURT: Yes. Anything else, though, that's  
10 coming up that we need to know? And there is no rush to put  
11 one of these on again if nothing is happening.

12 It sounds like there are going to be depositions going on  
13 December and January, and maybe the best time then is to put  
14 something on in February, unless you have an issue you want to  
15 address with me, after perhaps some of this discovery has been  
16 taken, right, and we have a better feel for where we are?  
17 Does that make sense to all of you?

18 MS. SHARKO: Yes.

19 MS. O'DELL: It does, Your Honor. And certainly we  
20 would have the phase discovery for the individual plaintiffs  
21 and the physicians completed, but some of the liability  
22 depositions that we have described in the status report, we  
23 anticipate later in the year, when, hopefully, we have a  
24 vaccine and maybe we can do those without being remote, but  
25 hope springs eternal on that point.

1           THE COURT: All right. Well, let's just do something  
2 then maybe at some point in February. Jackie is somewhere on  
3 the line with a calendar.

4           THE COURTROOM DEPUTY: Second week of February? We  
5 can do Tuesday, the 9th, at 2:00.

6           THE COURT: That's fine. Everybody good with that?

7           MS. PARFITT: That's fine.

8           MS. O'DELL: Yes, thank you.

9           THE COURT: Okay. If something comes up in the  
10 interim, that's fine. And if for some reason you think that  
11 date, there really is nothing to discuss, but that maybe a few  
12 weeks later would make sense, it's okay. You can let us know  
13 if you don't want to proceed on that date. I don't want to  
14 lose touch with all of you, but you're busy, you're doing what  
15 you need to do. We're all living in kind of an alternative  
16 universe, so -- and my feelings will not be hurt if you decide  
17 that you want to put it off a bit. Okay?

18           All right. Last chance. Nothing else that we need  
19 to discuss today? Okay. So we don't need a new scheduling  
20 order or anything else. There is nothing that we have to  
21 enter, so that's fine.

22           Okay. Everybody be safe, have good holidays.  
23 Remember the rules: Nobody outside your immediate family,  
24 right? Okay.

25           (The proceedings concluded at 2:18 p.m.)

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I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

/S/ Carol Farrell, NJ-CRCR, FCRR, RDR, CRR, RMR, CRC, CRI  
Court Reporter/Transcriber

November 18, 2020  
Date

/	12:2	<b>Beisner</b> <sup>[1]</sup> - 3:11	<b>coming</b> <sup>[1]</sup> - 13:10	<b>date</b> <sup>[2]</sup> - 14:11, 14:13
/S <sup>[1]</sup> - 15:6	<b>above-entitled</b> <sup>[1]</sup> - 15:4	<b>bench</b> <sup>[1]</sup> - 3:25	<b>Commencing</b> <sup>[1]</sup> - 1:10	<b>days</b> <sup>[1]</sup> - 3:25
0	<b>ace</b> <sup>[1]</sup> - 3:23	<b>best</b> <sup>[1]</sup> - 13:13	<b>comment</b> <sup>[1]</sup> - 7:18	<b>DC</b> <sup>[2]</sup> - 1:17, 2:15
07701 <sup>[1]</sup> - 2:7 07932 <sup>[1]</sup> - 2:10 08608 <sup>[1]</sup> - 1:9	<b>acknowledging</b> <sup>[1]</sup> - 5:14	<b>better</b> <sup>[1]</sup> - 13:16	<b>comments</b> <sup>[1]</sup> - 13:5	<b>DE</b> <sup>[1]</sup> - 2:4
1	<b>actions</b> <sup>[1]</sup> - 9:11	<b>BIDDLE</b> <sup>[1]</sup> - 2:8	<b>COMMERCE</b> <sup>[1]</sup> - 1:19	<b>dealing</b> <sup>[2]</sup> - 4:18, 12:12
123 <sup>[1]</sup> - 2:3 127 <sup>[1]</sup> - 2:6 1440 <sup>[1]</sup> - 2:14 17 <sup>[1]</sup> - 1:10 18 <sup>[1]</sup> - 15:8 1825 <sup>[1]</sup> - 1:16 19801 <sup>[1]</sup> - 2:4	<b>added</b> <sup>[1]</sup> - 11:11 <b>additions</b> <sup>[1]</sup> - 5:15 <b>address</b> <sup>[2]</sup> - 8:13, 13:15 <b>addressing</b> <sup>[1]</sup> - 11:16 <b>adhere</b> <sup>[2]</sup> - 10:1, 10:13 <b>adhering</b> <sup>[1]</sup> - 10:5 <b>adjourn</b> <sup>[1]</sup> - 4:9 <b>admitted</b> <sup>[1]</sup> - 3:4 <b>advocating</b> <sup>[1]</sup> - 10:14 <b>afternoon</b> <sup>[3]</sup> - 4:23, 7:13, 7:15 <b>agree</b> <sup>[1]</sup> - 11:5 <b>aided</b> <sup>[1]</sup> - 1:25 <b>AL</b> <sup>[1]</sup> - 1:20 <b>ALLEN</b> <sup>[1]</sup> - 1:18 <b>allowed</b> <sup>[1]</sup> - 10:4 <b>alternative</b> <sup>[1]</sup> - 14:15 <b>amending</b> <sup>[1]</sup> - 5:6 <b>amendments</b> <sup>[1]</sup> - 5:15 <b>AND</b> <sup>[1]</sup> - 1:5 <b>anticipate</b> <sup>[1]</sup> - 13:23 <b>anyway</b> <sup>[1]</sup> - 8:3 <b>appreciate</b> <sup>[1]</sup> - 8:25 <b>appropriate</b> <sup>[1]</sup> - 9:8 <b>area</b> <sup>[1]</sup> - 11:24 <b>ARPS</b> <sup>[1]</sup> - 2:13 <b>ASHCRAFT</b> <sup>[1]</sup> - 1:15 <b>assist</b> <sup>[1]</sup> - 9:12 <b>attached</b> <sup>[1]</sup> - 6:11 <b>attachment</b> <sup>[1]</sup> - 5:9 <b>attention</b> <sup>[3]</sup> - 4:21, 7:8, 9:22 <b>attorney</b> <sup>[3]</sup> - 9:6, 9:11, 9:20 <b>audio</b> <sup>[1]</sup> - 8:21 <b>available</b> <sup>[1]</sup> - 10:7 <b>AVENUE</b> <sup>[2]</sup> - 2:6, 2:14 <b>awhile</b> <sup>[1]</sup> - 11:23	<b>BOX</b> <sup>[1]</sup> - 14:17 <b>BOX</b> <sup>[1]</sup> - 1:20 <b>BRENNAN</b> <sup>[1]</sup> - 2:9 <b>Brennan</b> <sup>[2]</sup> - 3:12, 5:9 <b>briefed</b> <sup>[1]</sup> - 7:8 <b>bring</b> <sup>[1]</sup> - 4:20 <b>bringing</b> <sup>[1]</sup> - 4:13 <b>brought</b> <sup>[2]</sup> - 9:21, 10:17 <b>Building</b> <sup>[1]</sup> - 1:8 <b>busy</b> <sup>[1]</sup> - 14:14 <b>BY</b> <sup>[6]</sup> - 1:16, 1:19, 2:3, 2:6, 2:9, 2:14	<b>Companies</b> <sup>[2]</sup> - 2:11, 2:16 <b>complete</b> <sup>[1]</sup> - 9:18 <b>completed</b> <sup>[3]</sup> - 5:4, 7:4, 13:21 <b>completion</b> <sup>[1]</sup> - 6:2 <b>computer</b> <sup>[1]</sup> - 1:25 <b>computer-aided</b> <sup>[1]</sup> - 1:25 <b>computers</b> <sup>[1]</sup> - 12:6 <b>concerns</b> <sup>[1]</sup> - 6:17 <b>concluded</b> <sup>[1]</sup> - 14:25 <b>conditions</b> <sup>[1]</sup> - 12:21 <b>CONFERENCE</b> <sup>[1]</sup> - 1:5 <b>connect</b> <sup>[1]</sup> - 12:2 <b>Consumer</b> <sup>[4]</sup> - 2:11, 2:12, 2:16, 2:16 <b>contact</b> <sup>[2]</sup> - 4:1, 7:17 <b>continue</b> <sup>[1]</sup> - 9:17 <b>Continued</b> <sup>[1]</sup> - 2:1 <b>correct</b> <sup>[2]</sup> - 4:13, 15:3 <b>corrected</b> <sup>[1]</sup> - 6:7 <b>couple</b> <sup>[1]</sup> - 7:2 <b>course</b> <sup>[1]</sup> - 5:24 <b>COURT</b> <sup>[18]</sup> - 1:1, 3:4, 4:16, 4:24, 5:17, 5:19, 6:10, 6:20, 7:15, 7:21, 7:24, 8:22, 9:2, 11:20, 13:9, 14:1, 14:6, 14:9 <b>court</b> <sup>[1]</sup> - 3:23 <b>Court</b> <sup>[6]</sup> - 1:22, 3:20, 4:2, 5:14, 6:4, 15:6 <b>Court's</b> <sup>[1]</sup> - 5:7 <b>Courthouse</b> <sup>[1]</sup> - 1:8 <b>COURTROOM</b> <sup>[2]</sup> - 7:20, 14:4 <b>CRC</b> <sup>[1]</sup> - 15:6 <b>CRCR</b> <sup>[1]</sup> - 15:6 <b>CRI</b> <sup>[1]</sup> - 15:6 <b>criminal</b> <sup>[1]</sup> - 11:24 <b>CRR</b> <sup>[1]</sup> - 15:6 <b>cured</b> <sup>[1]</sup> - 5:12 <b>curing</b> <sup>[1]</sup> - 5:5 <b>custody</b> <sup>[2]</sup> - 11:25, 12:24 <b>cut</b> <sup>[2]</sup> - 5:20	<b>December</b> <sup>[3]</sup> - 7:5, 7:10, 13:13 <b>decide</b> <sup>[1]</sup> - 14:16 <b>Defendant</b> <sup>[1]</sup> - 2:11 <b>defendants</b> <sup>[8]</sup> - 4:17, 5:23, 8:17, 9:12, 11:24, 12:5, 12:23, 13:1 <b>Defendants</b> <sup>[1]</sup> - 2:15 <b>defense</b> <sup>[2]</sup> - 3:11, 11:11 <b>deficiencies</b> <sup>[2]</sup> - 5:5, 5:11 <b>deficiency</b> <sup>[1]</sup> - 6:7 <b>Denwiddie</b> <sup>[1]</sup> - 7:4 <b>deposition</b> <sup>[1]</sup> - 10:9 <b>depositions</b> <sup>[9]</sup> - 4:17, 8:9, 9:4, 9:15, 9:18, 10:20, 10:23, 11:8, 13:22 <b>deps</b> <sup>[1]</sup> - 13:12 <b>DEPUTY</b> <sup>[2]</sup> - 7:20, 14:4 <b>described</b> <sup>[1]</sup> - 13:22 <b>desire</b> <sup>[1]</sup> - 3:21 <b>determine</b> <sup>[1]</sup> - 12:3 <b>different</b> <sup>[4]</sup> - 10:19, 11:7, 13:1 <b>disappearing</b> <sup>[1]</sup> - 3:8 <b>discovery</b> <sup>[4]</sup> - 10:20, 11:14, 13:15, 13:20 <b>discuss</b> <sup>[4]</sup> - 4:4, 7:11, 14:11, 14:19 <b>dismiss</b> <sup>[2]</sup> - 5:3, 5:16 <b>distance</b> <sup>[1]</sup> - 8:19 <b>distanced</b> <sup>[1]</sup> - 9:8 <b>distortion</b> <sup>[1]</sup> - 8:21 <b>District</b> <sup>[1]</sup> - 3:3 <b>DISTRICT</b> <sup>[3]</sup> - 1:1, 1:1, 1:12 <b>DOCKET</b> <sup>[1]</sup> - 1:3 <b>document</b> <sup>[1]</sup> - 5:8 <b>done</b> <sup>[3]</sup> - 8:16, 9:5, 13:2 <b>down</b> <sup>[1]</sup> - 4:1 <b>DRINKER</b> <sup>[1]</sup> - 2:8 <b>drive</b> <sup>[1]</sup> - 10:1 <b>drop</b> <sup>[1]</sup> - 7:17
2	<b>background</b> <sup>[2]</sup> - 6:13, 8:23	<b>C</b>	<b>D</b>	<b>E</b>
20005 <sup>[1]</sup> - 2:15 20006 <sup>[1]</sup> - 1:17 2020 <sup>[2]</sup> - 1:10, 15:8 218 <sup>[1]</sup> - 1:19 2:00 <sup>[3]</sup> - 1:10, 3:3, 14:5 2:18 <sup>[1]</sup> - 14:25	<b>AL</b> <sup>[1]</sup> - 1:20 <b>ALLEN</b> <sup>[1]</sup> - 1:18 <b>allowed</b> <sup>[1]</sup> - 10:4 <b>alternative</b> <sup>[1]</sup> - 14:15 <b>amending</b> <sup>[1]</sup> - 5:6 <b>amendments</b> <sup>[1]</sup> - 5:15 <b>AND</b> <sup>[1]</sup> - 1:5 <b>anticipate</b> <sup>[1]</sup> - 13:23 <b>anyway</b> <sup>[1]</sup> - 8:3 <b>appreciate</b> <sup>[1]</sup> - 8:25 <b>appropriate</b> <sup>[1]</sup> - 9:8 <b>area</b> <sup>[1]</sup> - 11:24 <b>ARPS</b> <sup>[1]</sup> - 2:13 <b>ASHCRAFT</b> <sup>[1]</sup> - 1:15 <b>assist</b> <sup>[1]</sup> - 9:12 <b>attached</b> <sup>[1]</sup> - 6:11 <b>attachment</b> <sup>[1]</sup> - 5:9 <b>attention</b> <sup>[3]</sup> - 4:21, 7:8, 9:22 <b>attorney</b> <sup>[3]</sup> - 9:6, 9:11, 9:20 <b>audio</b> <sup>[1]</sup> - 8:21 <b>available</b> <sup>[1]</sup> - 10:7 <b>AVENUE</b> <sup>[2]</sup> - 2:6, 2:14 <b>awhile</b> <sup>[1]</sup> - 11:23	<b>calendar</b> <sup>[1]</sup> - 14:3 <b>camera</b> <sup>[1]</sup> - 9:10 <b>CAMPUS</b> <sup>[1]</sup> - 2:10 <b>care</b> <sup>[2]</sup> - 5:6, 12:17 <b>Carol</b> <sup>[7]</sup> - 1:22, 3:20, 3:23, 4:1, 8:6, 12:9, 15:6 <b>case</b> <sup>[2]</sup> - 7:4 <b>cases</b> <sup>[8]</sup> - 5:10, 5:23, 6:4, 6:5, 6:17, 9:6, 11:16, 11:18 <b>certain</b> <sup>[2]</sup> - 8:18, 9:6 <b>certainly</b> <sup>[3]</sup> - 5:7, 12:13, 13:19 <b>certify</b> <sup>[1]</sup> - 15:3 <b>cetera</b> <sup>[1]</sup> - 11:13 <b>cfarrell.crr@gmail.com</b> <sup>[1]</sup> - 1:23 <b>challenging</b> <sup>[1]</sup> - 10:11 <b>chance</b> <sup>[1]</sup> - 14:18 <b>changed</b> <sup>[1]</sup> - 5:11 <b>changes</b> <sup>[1]</sup> - 5:3 <b>Chief</b> <sup>[1]</sup> - 3:2 <b>CHIEF</b> <sup>[1]</sup> - 1:12 <b>Chris</b> <sup>[2]</sup> - 7:12, 7:22 <b>CHRISTOPHER</b> <sup>[1]</sup> - 2:6 <b>CIVIL</b> <sup>[1]</sup> - 1:3 <b>claim</b> <sup>[1]</sup> - 9:13 <b>Clarkson</b> <sup>[1]</sup> - 1:8 <b>clear</b> <sup>[1]</sup> - 11:15 <b>CLERK</b> <sup>[1]</sup> - 6:8 <b>client</b> <sup>[1]</sup> - 9:9 <b>client's</b> <sup>[1]</sup> - 8:21 <b>close</b> <sup>[1]</sup> - 9:24 <b>CMO</b> <sup>[1]</sup> - 6:25 <b>COHEN</b> <sup>[1]</sup> - 2:5	<b>connect</b> <sup>[1]</sup> - 12:2 <b>Consumer</b> <sup>[4]</sup> - 2:11, 2:12, 2:16, 2:16 <b>contact</b> <sup>[2]</sup> - 4:1, 7:17 <b>continue</b> <sup>[1]</sup> - 9:17 <b>Continued</b> <sup>[1]</sup> - 2:1 <b>correct</b> <sup>[2]</sup> - 4:13, 15:3 <b>corrected</b> <sup>[1]</sup> - 6:7 <b>couple</b> <sup>[1]</sup> - 7:2 <b>course</b> <sup>[1]</sup> - 5:24 <b>COURT</b> <sup>[18]</sup> - 1:1, 3:4, 4:16, 4:24, 5:17, 5:19, 6:10, 6:20, 7:15, 7:21, 7:24, 8:22, 9:2, 11:20, 13:9, 14:1, 14:6, 14:9 <b>court</b> <sup>[1]</sup> - 3:23 <b>Court</b> <sup>[6]</sup> - 1:22, 3:20, 4:2, 5:14, 6:4, 15:6 <b>Court's</b> <sup>[1]</sup> - 5:7 <b>Courthouse</b> <sup>[1]</sup> - 1:8 <b>COURTROOM</b> <sup>[2]</sup> - 7:20, 14:4 <b>CRC</b> <sup>[1]</sup> - 15:6 <b>CRCR</b> <sup>[1]</sup> - 15:6 <b>CRI</b> <sup>[1]</sup> - 15:6 <b>criminal</b> <sup>[1]</sup> - 11:24 <b>CRR</b> <sup>[1]</sup> - 15:6 <b>cured</b> <sup>[1]</sup> - 5:12 <b>curing</b> <sup>[1]</sup> - 5:5 <b>custody</b> <sup>[2]</sup> - 11:25, 12:24 <b>cut</b> <sup>[2]</sup> - 5:20	<b>described</b> <sup>[1]</sup> - 13:22 <b>desire</b> <sup>[1]</sup> - 3:21 <b>determine</b> <sup>[1]</sup> - 12:3 <b>different</b> <sup>[4]</sup> - 10:19, 11:7, 13:1 <b>disappearing</b> <sup>[1]</sup> - 3:8 <b>discovery</b> <sup>[4]</sup> - 10:20, 11:14, 13:15, 13:20 <b>discuss</b> <sup>[4]</sup> - 4:4, 7:11, 14:11, 14:19 <b>dismiss</b> <sup>[2]</sup> - 5:3, 5:16 <b>distance</b> <sup>[1]</sup> - 8:19 <b>distanced</b> <sup>[1]</sup> - 9:8 <b>distortion</b> <sup>[1]</sup> - 8:21 <b>District</b> <sup>[1]</sup> - 3:3 <b>DISTRICT</b> <sup>[3]</sup> - 1:1, 1:1, 1:12 <b>DOCKET</b> <sup>[1]</sup> - 1:3 <b>document</b> <sup>[1]</sup> - 5:8 <b>done</b> <sup>[3]</sup> - 8:16, 9:5, 13:2 <b>down</b> <sup>[1]</sup> - 4:1 <b>DRINKER</b> <sup>[1]</sup> - 2:8 <b>drive</b> <sup>[1]</sup> - 10:1 <b>drop</b> <sup>[1]</sup> - 7:17
3	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
30 <sup>[1]</sup> - 10:25 36104 <sup>[1]</sup> - 1:20 3:16-md-2738-FLW-LHG <sup>[1]</sup> - 1:4	<b>background</b> <sup>[2]</sup> - 6:13, 8:23 <b>BANK</b> <sup>[1]</sup> - 2:7 <b>Bathon</b> <sup>[1]</sup> - 7:3 <b>BEASLEY</b> <sup>[1]</sup> - 1:18 <b>begin</b> <sup>[1]</sup> - 3:16 <b>beginning</b> <sup>[1]</sup> - 9:16 <b>BEISNER</b> <sup>[1]</sup> - 2:14	<b>calendar</b> <sup>[1]</sup> - 14:3 <b>camera</b> <sup>[1]</sup> - 9:10 <b>CAMPUS</b> <sup>[1]</sup> - 2:10 <b>care</b> <sup>[2]</sup> - 5:6, 12:17 <b>Carol</b> <sup>[7]</sup> - 1:22, 3:20, 3:23, 4:1, 8:6, 12:9, 15:6 <b>case</b> <sup>[2]</sup> - 7:4 <b>cases</b> <sup>[8]</sup> - 5:10, 5:23, 6:4, 6:5, 6:17, 9:6, 11:16, 11:18 <b>certain</b> <sup>[2]</sup> - 8:18, 9:6 <b>certainly</b> <sup>[3]</sup> - 5:7, 12:13, 13:19 <b>certify</b> <sup>[1]</sup> - 15:3 <b>cetera</b> <sup>[1]</sup> - 11:13 <b>cfarrell.crr@gmail.com</b> <sup>[1]</sup> - 1:23 <b>challenging</b> <sup>[1]</sup> - 10:11 <b>chance</b> <sup>[1]</sup> - 14:18 <b>changed</b> <sup>[1]</sup> - 5:11 <b>changes</b> <sup>[1]</sup> - 5:3 <b>Chief</b> <sup>[1]</sup> - 3:2 <b>CHIEF</b> <sup>[1]</sup> - 1:12 <b>Chris</b> <sup>[2]</sup> - 7:12, 7:22 <b>CHRISTOPHER</b> <sup>[1]</sup> - 2:6 <b>CIVIL</b> <sup>[1]</sup> - 1:3 <b>claim</b> <sup>[1]</sup> - 9:13 <b>Clarkson</b> <sup>[1]</sup> - 1:8 <b>clear</b> <sup>[1]</sup> - 11:15 <b>CLERK</b> <sup>[1]</sup> - 6:8 <b>client</b> <sup>[1]</sup> - 9:9 <b>client's</b> <sup>[1]</sup> - 8:21 <b>close</b> <sup>[1]</sup> - 9:24 <b>CMO</b> <sup>[1]</sup> - 6:25 <b>COHEN</b> <sup>[1]</sup> - 2:5	<b>connect</b> <sup>[1]</sup> - 12:2 <b>Consumer</b> <sup>[4]</sup> - 2:11, 2:12, 2:16, 2:16 <b>contact</b> <sup>[2]</sup> - 4:1, 7:17 <b>continue</b> <sup>[1]</sup> - 9:17 <b>Continued</b> <sup>[1]</sup> - 2:1 <b>correct</b> <sup>[2]</sup> - 4:13, 15:3 <b>corrected</b> <sup>[1]</sup> - 6:7 <b>couple</b> <sup>[1]</sup> - 7:2 <b>course</b> <sup>[1]</sup> - 5:24 <b>COURT</b> <sup>[18]</sup> - 1:1, 3:4, 4:16, 4:24, 5:17, 5:19, 6:10, 6:20, 7:15, 7:21, 7:24, 8:22, 9:2, 11:20, 13:9, 14:1, 14:6, 14:9 <b>court</b> <sup>[1]</sup> - 3:23 <b>Court</b> <sup>[6]</sup> - 1:22, 3:20, 4:2, 5:14, 6:4, 15:6 <b>Court's</b> <sup>[1]</sup> - 5:7 <b>Courthouse</b> <sup>[1]</sup> - 1:8 <b>COURTROOM</b> <sup>[2]</sup> - 7:20, 14:4 <b>CRC</b> <sup>[1]</sup> - 15:6 <b>CRCR</b> <sup>[1]</sup> - 15:6 <b>CRI</b> <sup>[1]</sup> - 15:6 <b>criminal</b> <sup>[1]</sup> - 11:24 <b>CRR</b> <sup>[1]</sup> - 15:6 <b>cured</b> <sup>[1]</sup> - 5:12 <b>curing</b> <sup>[1]</sup> - 5:5 <b>custody</b> <sup>[2]</sup> - 11:25, 12:24 <b>cut</b> <sup>[2]</sup> - 5:20	<b>described</b> <sup>[1]</sup> - 13:22 <b>desire</b> <sup>[1]</sup> - 3:21 <b>determine</b> <sup>[1]</sup> - 12:3 <b>different</b> <sup>[4]</sup> - 10:19, 11:7, 13:1 <b>disappearing</b> <sup>[1]</sup> - 3:8 <b>discovery</b> <sup>[4]</sup> - 10:20, 11:14, 13:15, 13:20 <b>discuss</b> <sup>[4]</sup> - 4:4, 7:11, 14:11, 14:19 <b>dismiss</b> <sup>[2]</sup> - 5:3, 5:16 <b>distance</b> <sup>[1]</sup> - 8:19 <b>distanced</b> <sup>[1]</sup> - 9:8 <b>distortion</b> <sup>[1]</sup> - 8:21 <b>District</b> <sup>[1]</sup> - 3:3 <b>DISTRICT</b> <sup>[3]</sup> - 1:1, 1:1, 1:12 <b>DOCKET</b> <sup>[1]</sup> - 1:3 <b>document</b> <sup>[1]</sup> - 5:8 <b>done</b> <sup>[3]</sup> - 8:16, 9:5, 13:2 <b>down</b> <sup>[1]</sup> - 4:1 <b>DRINKER</b> <sup>[1]</sup> - 2:8 <b>drive</b> <sup>[1]</sup> - 10:1 <b>drop</b> <sup>[1]</sup> - 7:17
4	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
402 <sup>[1]</sup> - 1:9 4160 <sup>[1]</sup> - 1:20	<b>background</b> <sup>[2]</sup> - 6:13, 8:23 <b>BANK</b> <sup>[1]</sup> - 2:7 <b>Bathon</b> <sup>[1]</sup> - 7:3 <b>BEASLEY</b> <sup>[1]</sup> - 1:18 <b>begin</b> <sup>[1]</sup> - 3:16 <b>beginning</b> <sup>[1]</sup> - 9:16 <b>BEISNER</b> <sup>[1]</sup> - 2:14	<b>calendar</b> <sup>[1]</sup> - 14:3 <b>camera</b> <sup>[1]</sup> - 9:10 <b>CAMPUS</b> <sup>[1]</sup> - 2:10 <b>care</b> <sup>[2]</sup> - 5:6, 12:17 <b>Carol</b> <sup>[7]</sup> - 1:22, 3:20, 3:23, 4:1, 8:6, 12:9, 15:6 <b>case</b> <sup>[2]</sup> - 7:4 <b>cases</b> <sup>[8]</sup> - 5:10, 5:23, 6:4, 6:5, 6:17, 9:6, 11:16, 11:18 <b>certain</b> <sup>[2]</sup> - 8:18, 9:6 <b>certainly</b> <sup>[3]</sup> - 5:7, 12:13, 13:19 <b>certify</b> <sup>[1]</sup> - 15:3 <b>cetera</b> <sup>[1]</sup> - 11:13 <b>cfarrell.crr@gmail.com</b> <sup>[1]</sup> - 1:23 <b>challenging</b> <sup>[1]</sup> - 10:11 <b>chance</b> <sup>[1]</sup> - 14:18 <b>changed</b> <sup>[1]</sup> - 5:11 <b>changes</b> <sup>[1]</sup> - 5:3 <b>Chief</b> <sup>[1]</sup> - 3:2 <b>CHIEF</b> <sup>[1]</sup> - 1:12 <b>Chris</b> <sup>[2]</sup> - 7:12, 7:22 <b>CHRISTOPHER</b> <sup>[1]</sup> - 2:6 <b>CIVIL</b> <sup>[1]</sup> - 1:3 <b>claim</b> <sup>[1]</sup> - 9:13 <b>Clarkson</b> <sup>[1]</sup> - 1:8 <b>clear</b> <sup>[1]</sup> - 11:15 <b>CLERK</b> <sup>[1]</sup> - 6:8 <b>client</b> <sup>[1]</sup> - 9:9 <b>client's</b> <sup>[1]</sup> - 8:21 <b>close</b> <sup>[1]</sup> - 9:24 <b>CMO</b> <sup>[1]</sup> - 6:25 <b>COHEN</b> <sup>[1]</sup> - 2:5	<b>connect</b> <sup>[1]</sup> - 12:2 <b>Consumer</b> <sup>[4]</sup> - 2:11, 2:12, 2:16, 2:16 <b>contact</b> <sup>[2]</sup> - 4:1, 7:17 <b>continue</b> <sup>[1]</sup> - 9:17 <b>Continued</b> <sup>[1]</sup> - 2:1 <b>correct</b> <sup>[2]</sup> - 4:13, 15:3 <b>corrected</b> <sup>[1]</sup> - 6:7 <b>couple</b> <sup>[1]</sup> - 7:2 <b>course</b> <sup>[1]</sup> - 5:24 <b>COURT</b> <sup>[18]</sup> - 1:1, 3:4, 4:16, 4:24, 5:17, 5:19, 6:10, 6:20, 7:15, 7:21, 7:24, 8:22, 9:2, 11:20, 13:9, 14:1, 14:6, 14:9 <b>court</b> <sup>[1]</sup> - 3:23 <b>Court</b> <sup>[6]</sup> - 1:22, 3:20, 4:2, 5:14, 6:4, 15:6 <b>Court's</b> <sup>[1]</sup> - 5:7 <b>Courthouse</b> <sup>[1]</sup> - 1:8 <b>COURTROOM</b> <sup>[2]</sup> - 7:20, 14:4 <b>CRC</b> <sup>[1]</sup> - 15:6 <b>CRCR</b> <sup>[1]</sup> - 15:6 <b>CRI</b> <sup>[1]</sup> - 15:6 <b>criminal</b> <sup>[1]</sup> - 11:24 <b>CRR</b> <sup>[1]</sup> - 15:6 <b>cured</b> <sup>[1]</sup> - 5:12 <b>curing</b> <sup>[1]</sup> - 5:5 <b>custody</b> <sup>[2]</sup> - 11:25, 12:24 <b>cut</b> <sup>[2]</sup> - 5:20	<b>described</b> <sup>[1]</sup> - 13:22 <b>desire</b> <sup>[1]</sup> - 3:21 <b>determine</b> <sup>[1]</sup> - 12:3 <b>different</b> <sup>[4]</sup> - 10:19, 11:7, 13:1 <b>disappearing</b> <sup>[1]</sup> - 3:8 <b>discovery</b> <sup>[4]</sup> - 10:20, 11:14, 13:15, 13:20 <b>discuss</b> <sup>[4]</sup> - 4:4, 7:11, 14:11, 14:19 <b>dismiss</b> <sup>[2]</sup> - 5:3, 5:16 <b>distance</b> <sup>[1]</sup> - 8:19 <b>distanced</b> <sup>[1]</sup> - 9:8 <b>distortion</b> <sup>[1]</sup> - 8:21 <b>District</b> <sup>[1]</sup> - 3:3 <b>DISTRICT</b> <sup>[3]</sup> - 1:1, 1:1, 1:12 <b>DOCKET</b> <sup>[1]</sup> - 1:3 <b>document</b> <sup>[1]</sup> - 5:8 <b>done</b> <sup>[3]</sup> - 8:16, 9:5, 13:2 <b>down</b> <sup>[1]</sup> - 4:1 <b>DRINKER</b> <sup>[1]</sup> - 2:8 <b>drive</b> <sup>[1]</sup> - 10:1 <b>drop</b> <sup>[1]</sup> - 7:17
6	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
600 <sup>[1]</sup> - 2:10 6TH <sup>[1]</sup> - 2:3	<b>background</b> <sup>[2]</sup> - 6:13, 8:23 <b>BANK</b> <sup>[1]</sup> -			



<b>EISENHOFER</b> <sup>[1]</sup> - 2:2 <b>either</b> <sup>[1]</sup> - 9:9 <b>embark</b> <sup>[1]</sup> - 10:21 <b>end</b> <sup>[2]</sup> - 7:5, 7:10 <b>enter</b> <sup>[1]</sup> - 14:21 <b>entitled</b> <sup>[1]</sup> - 15:4 <b>ESQUIRE</b> <sup>[7]</sup> - 1:16, 1:19, 2:3, 2:6, 2:9, 2:9, 2:14 <b>estates</b> <sup>[1]</sup> - 6:2 <b>et</b> <sup>[1]</sup> - 11:13 <b>eternal</b> <sup>[1]</sup> - 13:25 <b>excuse</b> <sup>[2]</sup> - 5:2, 5:20 <b>exhibit</b> <sup>[1]</sup> - 6:23 <b>Exhibit</b> <sup>[1]</sup> - 6:23 <b>experience</b> <sup>[3]</sup> - 8:7, 8:14, 11:22 <b>explaining</b> <sup>[1]</sup> - 11:3 <b>extremis</b> <sup>[2]</sup> - 10:18, 11:16	<b>follow</b> <sup>[1]</sup> - 10:15 <b>following</b> <sup>[1]</sup> - 3:5 <b>FOR</b> <sup>[1]</sup> - 1:1 <b>foregoing</b> <sup>[1]</sup> - 15:3 <b>forms</b> <sup>[1]</sup> - 5:4 <b>forward</b> <sup>[2]</sup> - 8:1, 10:23 <b>four</b> <sup>[1]</sup> - 11:1 <b>frankly</b> <sup>[2]</sup> - 6:18, 7:24 <b>FREDA</b> <sup>[1]</sup> - 1:12 <b>Freda</b> <sup>[1]</sup> - 3:2 <b>fully</b> <sup>[1]</sup> - 7:8	<p style="text-align: center;"><b>I</b></p> <b>identify</b> <sup>[2]</sup> - 5:18, 5:22 <b>ignoring</b> <sup>[1]</sup> - 4:6 <b>ill</b> <sup>[2]</sup> - 3:21, 9:5 <b>imagine</b> <sup>[1]</sup> - 9:15 <b>immediate</b> <sup>[1]</sup> - 14:23 <b>impacts</b> <sup>[1]</sup> - 11:12 <b>IN</b> <sup>[1]</sup> - 1:4 <b>Inc</b> <sup>[4]</sup> - 2:11, 2:12, 2:16, 2:16 <b>include</b> <sup>[1]</sup> - 4:16 <b>including</b> <sup>[1]</sup> - 3:24 <b>indeed</b> <sup>[2]</sup> - 5:12, 6:6 <b>indicated</b> <sup>[1]</sup> - 6:6 <b>individual</b> <sup>[3]</sup> - 9:10, 13:20 <b>individuals</b> <sup>[1]</sup> - 12:5 <b>information</b> <sup>[1]</sup> - 7:17 <b>instance</b> <sup>[2]</sup> - 7:3, 12:24 <b>interfering</b> <sup>[1]</sup> - 9:13 <b>interim</b> <sup>[1]</sup> - 14:10 <b>introducing</b> <sup>[1]</sup> - 3:19 <b>involve</b> <sup>[2]</sup> - 6:3, 11:7 <b>involved</b> <sup>[2]</sup> - 10:18, 11:18 <b>issue</b> <sup>[8]</sup> - 5:1, 8:12, 9:19, 11:12, 11:19, 11:25, 12:3, 13:14 <b>issues</b> <sup>[5]</sup> - 4:12, 4:16, 10:18, 11:14, 12:8	<b>kinds</b> <sup>[1]</sup> - 12:19 <b>known</b> <sup>[2]</sup> - 2:12, 2:16 <b>knows</b> <sup>[1]</sup> - 12:18 <p style="text-align: center;"><b>L</b></p> <b>lack</b> <sup>[1]</sup> - 6:5 <b>last</b> <sup>[3]</sup> - 5:3, 5:24, 14:18 <b>late</b> <sup>[1]</sup> - 9:14 <b>LAW</b> <sup>[2]</sup> - 1:18, 6:8 <b>law</b> <sup>[1]</sup> - 10:15 <b>lawyer</b> <sup>[5]</sup> - 10:5, 10:12, 11:2, 11:10, 11:11 <b>lawyer's</b> <sup>[1]</sup> - 12:24 <b>lawyers</b> <sup>[3]</sup> - 11:1, 11:18 <b>least</b> <sup>[1]</sup> - 7:9 <b>leave</b> <sup>[1]</sup> - 12:10 <b>LEIGH</b> <sup>[2]</sup> - 1:19, 2:9 <b>Leigh</b> <sup>[2]</sup> - 8:13, 9:21 <b>letter</b> <sup>[4]</sup> - 4:21, 6:9, 6:10, 6:21 <b>liability</b> <sup>[1]</sup> - 13:21 <b>LIABILITY</b> <sup>[1]</sup> - 1:5 <b>light</b> <sup>[1]</sup> - 5:11 <b>limited</b> <sup>[1]</sup> - 11:17 <b>line</b> <sup>[1]</sup> - 14:3 <b>listed</b> <sup>[3]</sup> - 5:20, 6:24, 7:1 <b>LITIGATION</b> <sup>[1]</sup> - 1:6 <b>living</b> <sup>[1]</sup> - 14:15 <b>LLP</b> <sup>[3]</sup> - 1:15, 2:8, 2:13 <b>locations</b> <sup>[1]</sup> - 13:1 <b>Locke</b> <sup>[1]</sup> - 3:14 <b>Locke's</b> <sup>[1]</sup> - 7:18 <b>look</b> <sup>[1]</sup> - 7:9 <b>lose</b> <sup>[1]</sup> - 14:14	<b>MICHELLE</b> <sup>[1]</sup> - 1:16 <b>midst</b> <sup>[1]</sup> - 7:6 <b>might</b> <sup>[3]</sup> - 4:10, 9:13, 12:19 <b>moments</b> <sup>[1]</sup> - 4:10 <b>MONTGOMERY</b> <sup>[1]</sup> - 1:20 <b>month</b> <sup>[2]</sup> - 7:5, 9:17 <b>months</b> <sup>[2]</sup> - 3:24, 11:9 <b>morning</b> <sup>[1]</sup> - 7:13 <b>most</b> <sup>[3]</sup> - 4:11, 6:12, 9:5 <b>motion</b> <sup>[1]</sup> - 5:10 <b>motions</b> <sup>[3]</sup> - 5:2, 5:16, 6:8 <b>MR</b> <sup>[3]</sup> - 7:13, 7:16, 7:23 <b>MS</b> <sup>[18]</sup> - 4:14, 4:15, 4:22, 4:25, 5:18, 5:22, 6:15, 8:11, 8:12, 8:25, 9:4, 9:23, 10:17, 13:8, 13:18, 13:19, 14:7, 14:8 <b>mute</b> <sup>[2]</sup> - 8:23, 8:24
<p style="text-align: center;"><b>F</b></p> <b>fact</b> <sup>[1]</sup> - 5:11 <b>facts</b> <sup>[1]</sup> - 11:18 <b>FAEGRE</b> <sup>[1]</sup> - 2:8 <b>fair</b> <sup>[1]</sup> - 11:10 <b>faith</b> <sup>[1]</sup> - 5:25 <b>fall</b> <sup>[1]</sup> - 8:2 <b>families</b> <sup>[1]</sup> - 3:18 <b>family</b> <sup>[1]</sup> - 14:23 <b>FANG</b> <sup>[1]</sup> - 6:8 <b>Farrell</b> <sup>[3]</sup> - 1:22, 3:20, 15:6 <b>FCRR</b> <sup>[1]</sup> - 15:6 <b>February</b> <sup>[3]</sup> - 13:14, 14:2, 14:4 <b>feelings</b> <sup>[2]</sup> - 4:8, 14:16 <b>feet</b> <sup>[1]</sup> - 12:17 <b>felt</b> <sup>[1]</sup> - 4:6 <b>few</b> <sup>[4]</sup> - 4:10, 5:25, 9:23, 14:11 <b>field</b> <sup>[1]</sup> - 10:23 <b>filed</b> <sup>[1]</sup> - 5:8 <b>finally</b> <sup>[1]</sup> - 3:22 <b>fine</b> <sup>[4]</sup> - 14:6, 14:7, 14:10, 14:21 <b>FIRM</b> <sup>[1]</sup> - 1:18 <b>firm</b> <sup>[3]</sup> - 8:14, 9:25 <b>firms</b> <sup>[3]</sup> - 5:4, 5:22, 8:19 <b>first</b> <sup>[3]</sup> - 3:13, 5:19, 6:24 <b>Fisher</b> <sup>[1]</sup> - 1:8 <b>five</b> <sup>[2]</sup> - 5:19, 6:24 <b>FLOM</b> <sup>[1]</sup> - 2:13 <b>FLOOR</b> <sup>[1]</sup> - 2:3 <b>FLORHAM</b> <sup>[1]</sup> - 2:10 <b>fly</b> <sup>[1]</sup> - 10:13	<p style="text-align: center;"><b>G</b></p> <b>GEREL</b> <sup>[1]</sup> - 1:15 <b>grade</b> <sup>[1]</sup> - 7:19 <b>GRANT</b> <sup>[1]</sup> - 2:2 <b>great</b> <sup>[1]</sup> - 3:18 <b>guess</b> <sup>[2]</sup> - 4:16, 6:13 <b>guidelines</b> <sup>[3]</sup> - 10:1, 10:6, 10:13 <b>guilty</b> <sup>[1]</sup> - 4:6 <b>guitar</b> <sup>[1]</sup> - 7:18	<p style="text-align: center;"><b>H</b></p> <b>hair</b> <sup>[1]</sup> - 6:14 <b>half</b> <sup>[1]</sup> - 7:5 <b>handle</b> <sup>[3]</sup> - 10:2, 11:21, 13:5 <b>happy</b> <sup>[1]</sup> - 8:6 <b>head</b> <sup>[1]</sup> - 7:23 <b>healthy</b> <sup>[1]</sup> - 3:17 <b>heard</b> <sup>[2]</sup> - 9:1, 11:4 <b>hearing</b> <sup>[1]</sup> - 3:7 <b>hearings</b> <sup>[1]</sup> - 8:2 <b>held</b> <sup>[1]</sup> - 3:1 <b>help</b> <sup>[2]</sup> - 3:7, 9:8 <b>helps</b> <sup>[1]</sup> - 3:8 <b>himself</b> <sup>[1]</sup> - 6:12 <b>hit</b> <sup>[1]</sup> - 3:22 <b>holidays</b> <sup>[1]</sup> - 14:22 <b>home</b> <sup>[5]</sup> - 8:21, 9:3, 9:5, 9:7 <b>Honor</b> <sup>[9]</sup> - 4:22, 5:6, 7:14, 8:11, 8:16, 8:25, 9:23, 13:8, 13:19 <b>Honorable</b> <sup>[1]</sup> - 3:2 <b>HONORABLE</b> <sup>[1]</sup> - 1:12 <b>hope</b> <sup>[2]</sup> - 3:17, 13:25 <b>hoped</b> <sup>[1]</sup> - 6:2 <b>hopefully</b> <sup>[2]</sup> - 3:18, 13:23 <b>house</b> <sup>[1]</sup> - 8:20 <b>hurt</b> <sup>[2]</sup> - 4:8, 14:16	<p style="text-align: center;"><b>J</b></p> <b>J&amp;J</b> <sup>[1]</sup> - 6:17 <b>Jackie</b> <sup>[2]</sup> - 7:21, 14:2 <b>January</b> <sup>[2]</sup> - 9:17, 13:13 <b>JERSEY</b> <sup>[1]</sup> - 1:1 <b>Jersey</b> <sup>[1]</sup> - 1:9 <b>JESSICA</b> <sup>[1]</sup> - 2:9 <b>JOHN</b> <sup>[1]</sup> - 2:14 <b>JOHNSON</b> <sup>[2]</sup> - 1:4 <b>Johnson</b> <sup>[12]</sup> - 2:11, 2:11, 2:12, 2:15, 2:16, 2:16 <b>joint</b> <sup>[1]</sup> - 6:21 <b>JUDGE</b> <sup>[1]</sup> - 1:12 <b>Judge</b> <sup>[12]</sup> - 3:3, 4:13, 6:8, 9:22, 10:18, 11:6, 11:15, 11:20, 12:4, 12:10, 13:5 <b>JUSTISON</b> <sup>[1]</sup> - 2:3 <p style="text-align: center;"><b>K</b></p> <b>keep</b> <sup>[1]</sup> - 6:25 <b>kind</b> <sup>[1]</sup> - 14:15	<p style="text-align: center;"><b>N</b></p> <b>N.W</b> <sup>[1]</sup> - 2:14 <b>navigate</b> <sup>[1]</sup> - 10:10 <b>necessarily</b> <sup>[1]</sup> - 9:5 <b>necessary</b> <sup>[2]</sup> - 6:1 <b>need</b> <sup>[11]</sup> - 4:8, 4:9, 5:7, 7:11, 8:19, 12:6, 13:10, 14:15, 14:18, 14:19 <b>needs</b> <sup>[1]</sup> - 5:6 <b>NEW</b> <sup>[2]</sup> - 1:1, 2:14 <b>new</b> <sup>[2]</sup> - 3:23, 14:19 <b>New</b> <sup>[1]</sup> - 1:9 <b>next</b> <sup>[2]</sup> - 7:5, 9:17 <b>NJ</b> <sup>[3]</sup> - 2:7, 2:10, 15:6 <b>NJ-CRCR</b> <sup>[1]</sup> - 15:6 <b>nobody</b> <sup>[1]</sup> - 14:23 <b>noise</b> <sup>[1]</sup> - 8:23 <b>note</b> <sup>[1]</sup> - 7:17 <b>nothing</b> <sup>[4]</sup> - 13:11, 14:11, 14:18, 14:20 <b>notice</b> <sup>[1]</sup> - 5:19 <b>November</b> <sup>[2]</sup> - 1:10, 15:8 <b>NUMBER</b> <sup>[1]</sup> - 1:3 <b>NW</b> <sup>[1]</sup> - 1:16 <p style="text-align: center;"><b>O</b></p> <b>O'Dell</b> <sup>[1]</sup> - 3:12 <b>O'DELL</b> <sup>[5]</sup> - 1:19, 9:23, 13:8, 13:19, 14:8

<p><b>objected</b> <sup>[1]</sup> - 11:3 <b>observed</b> <sup>[1]</sup> - 9:11 <b>obviously</b> <sup>[1]</sup> - 7:7 <b>OF</b> <sup>[1]</sup> - 1:1 <b>office</b> <sup>[1]</sup> - 12:25 <b>Official</b> <sup>[3]</sup> - 1:22, 3:20, 4:1 <b>one</b> <sup>[5]</sup> - 4:7, 4:9, 5:1, 8:12, 13:11 <b>ones</b> <sup>[1]</sup> - 6:21 <b>opportunity</b> <sup>[1]</sup> - 10:7 <b>opposed</b> <sup>[2]</sup> - 6:6, 6:7 <b>opposition</b> <sup>[3]</sup> - 6:5, 6:16, 9:14 <b>order</b> <sup>[1]</sup> - 14:20 <b>outside</b> <sup>[1]</sup> - 14:23 <b>own</b> <sup>[2]</sup> - 10:10, 12:6</p>	<p>13:5 <b>Pisano's</b> <sup>[1]</sup> - 9:22 <b>PLACITELLA</b> <sup>[5]</sup> - 2:5, 2:6, 7:13, 7:16, 7:23 <b>Placitella</b> <sup>[2]</sup> - 3:12, 7:12 <b>plaintiff</b> <sup>[5]</sup> - 8:20, 9:24, 10:2, 10:4, 10:9 <b>plaintiff's</b> <sup>[4]</sup> - 9:6, 9:20, 11:2, 11:10 <b>plaintiffs</b> <sup>[7]</sup> - 8:18, 9:3, 10:8, 10:19, 10:20, 10:25, 13:20 <b>Plaintiffs</b> <sup>[4]</sup> - 1:17, 1:21, 2:4, 2:7 <b>plaintiffs'</b> <sup>[3]</sup> - 3:10, 9:4, 9:18 <b>played</b> <sup>[1]</sup> - 7:19 <b>playing</b> <sup>[1]</sup> - 10:23 <b>plea</b> <sup>[1]</sup> - 12:25 <b>point</b> <sup>[4]</sup> - 4:1, 8:16, 13:25, 14:2 <b>pool</b> <sup>[2]</sup> - 10:20, 10:25 <b>position</b> <sup>[2]</sup> - 10:2, 11:5 <b>POWDER</b> <sup>[1]</sup> - 1:4 <b>practiced</b> <sup>[1]</sup> - 8:19 <b>PRACTICES</b> <sup>[1]</sup> - 1:5 <b>precautions</b> <sup>[1]</sup> - 9:8 <b>precedential</b> <sup>[1]</sup> - 11:17 <b>prepared</b> <sup>[1]</sup> - 11:5 <b>present</b> <sup>[3]</sup> - 12:4, 12:11, 12:14 <b>pretty</b> <sup>[1]</sup> - 3:13 <b>proceed</b> <sup>[1]</sup> - 14:13 <b>Proceedings</b> <sup>[1]</sup> - 1:24 <b>proceedings</b> <sup>[2]</sup> - 14:25, 15:4 <b>PROCEEDINGS</b> <sup>[1]</sup> - 3:1 <b>process</b> <sup>[1]</sup> - 9:13 <b>produced</b> <sup>[1]</sup> - 1:25 <b>PRODUCTS</b> <sup>[2]</sup> - 1:4, 1:5 <b>proper</b> <sup>[1]</sup> - 7:16 <b>pursuant</b> <sup>[1]</sup> - 6:25 <b>put</b> <sup>[6]</sup> - 10:9, 12:21, 13:3, 13:10, 13:13, 14:17 <b>putting</b> <sup>[1]</sup> - 10:16</p>	<p><b>R</b></p> <p><b>raising</b> <sup>[1]</sup> - 4:12 <b>RDR</b> <sup>[1]</sup> - 15:6 <b>RE</b> <sup>[1]</sup> - 1:4 <b>reading</b> <sup>[1]</sup> - 4:3 <b>really</b> <sup>[6]</sup> - 7:24, 8:7, 10:2, 12:3, 12:18, 14:11 <b>reason</b> <sup>[3]</sup> - 4:5, 6:19, 14:10 <b>reasons</b> <sup>[1]</sup> - 10:24 <b>REATH</b> <sup>[1]</sup> - 2:8 <b>receive</b> <sup>[1]</sup> - 6:2 <b>receiving</b> <sup>[1]</sup> - 6:1 <b>recently</b> <sup>[2]</sup> - 7:7, 9:16 <b>record</b> <sup>[1]</sup> - 15:4 <b>recorded</b> <sup>[1]</sup> - 1:24 <b>records</b> <sup>[1]</sup> - 6:1 <b>RED</b> <sup>[1]</sup> - 2:7 <b>refuses</b> <sup>[1]</sup> - 6:12 <b>regard</b> <sup>[4]</sup> - 8:12, 8:14, 8:17, 9:19 <b>remain</b> <sup>[2]</sup> - 9:7, 9:10 <b>remedied</b> <sup>[1]</sup> - 6:18 <b>remember</b> <sup>[1]</sup> - 14:23 <b>REMOTE</b> <sup>[1]</sup> - 1:6 <b>remote</b> <sup>[3]</sup> - 3:1, 10:24, 13:24 <b>report</b> <sup>[5]</sup> - 4:3, 5:1, 5:5, 5:15, 13:22 <b>reported</b> <sup>[1]</sup> - 5:2 <b>Reporter</b> <sup>[3]</sup> - 1:22, 3:20, 4:2 <b>reporter</b> <sup>[1]</sup> - 3:23 <b>Reporter/Transcriber</b> <sup>[1]</sup> - 15:6 <b>reports</b> <sup>[1]</sup> - 6:2 <b>representing</b> <sup>[1]</sup> - 5:9 <b>respects</b> <sup>[1]</sup> - 10:19 <b>retired</b> <sup>[1]</sup> - 3:22 <b>retirement</b> <sup>[1]</sup> - 8:5 <b>risk</b> <sup>[1]</sup> - 10:16 <b>RMR</b> <sup>[1]</sup> - 15:6 <b>rolling</b> <sup>[1]</sup> - 5:24 <b>room</b> <sup>[5]</sup> - 11:2, 11:10, 12:16, 12:22, 13:2 <b>ROTH</b> <sup>[1]</sup> - 2:5 <b>rule</b> <sup>[1]</sup> - 6:5 <b>rules</b> <sup>[2]</sup> - 11:8, 14:23 <b>ruling</b> <sup>[2]</sup> - 5:14, 10:18 <b>rulings</b> <sup>[1]</sup> - 11:17 <b>rush</b> <sup>[1]</sup> - 13:10</p>	<p>10:13, 12:19 <b>SALES</b> <sup>[1]</sup> - 1:5 <b>savvy</b> <sup>[2]</sup> - 8:7, 8:18 <b>saw</b> <sup>[1]</sup> - 7:25 <b>schedule</b> <sup>[1]</sup> - 8:3 <b>scheduled</b> <sup>[2]</sup> - 4:7, 9:16 <b>scheduling</b> <sup>[1]</sup> - 14:19 <b>screen</b> <sup>[4]</sup> - 3:13, 3:15, 3:20, 4:2 <b>second</b> <sup>[1]</sup> - 14:4 <b>see</b> <sup>[13]</sup> - 3:6, 3:9, 3:11, 3:12, 3:14, 3:16, 3:19, 4:2, 4:3, 6:15, 6:17, 12:15 <b>send</b> <sup>[3]</sup> - 6:21, 7:20, 7:21 <b>sense</b> <sup>[2]</sup> - 13:17, 14:12 <b>sentencing</b> <sup>[1]</sup> - 12:25 <b>set</b> <sup>[1]</sup> - 6:3 <b>several</b> <sup>[1]</sup> - 5:10 <b>SHARKO</b> <sup>[5]</sup> - 2:9, 4:14, 8:11, 10:17, 13:18 <b>Sharko</b> <sup>[1]</sup> - 3:11 <b>sheet</b> <sup>[1]</sup> - 6:6 <b>side</b> <sup>[2]</sup> - 3:9, 3:11 <b>SINDHU</b> <sup>[1]</sup> - 2:3 <b>situation</b> <sup>[3]</sup> - 6:18, 10:8, 10:12 <b>situations</b> <sup>[3]</sup> - 9:24, 10:3, 10:14 <b>six</b> <sup>[2]</sup> - 3:25, 12:17 <b>SKADDEN</b> <sup>[1]</sup> - 2:13 <b>SLATE</b> <sup>[1]</sup> - 2:13 <b>socially</b> <sup>[2]</sup> - 8:19, 9:7 <b>someone</b> <sup>[6]</sup> - 7:16, 12:14, 12:15, 12:16, 12:20, 12:22 <b>somewhere</b> <sup>[1]</sup> - 14:2 <b>sorry</b> <sup>[1]</sup> - 5:20 <b>sound</b> <sup>[1]</sup> - 11:12 <b>sounds</b> <sup>[1]</sup> - 13:12 <b>speaking</b> <sup>[3]</sup> - 3:5, 8:22, 8:24 <b>specific</b> <sup>[1]</sup> - 11:18 <b>springs</b> <sup>[1]</sup> - 13:25 <b>stage</b> <sup>[1]</sup> - 5:2 <b>start</b> <sup>[3]</sup> - 3:19, 5:14, 6:4 <b>starting</b> <sup>[3]</sup> - 9:15, 9:16, 10:21 <b>State</b> <sup>[1]</sup> - 1:9 <b>state</b> <sup>[1]</sup> - 10:15 <b>states</b> <sup>[1]</sup> - 11:7 <b>States</b> <sup>[1]</sup> - 3:2 <b>STATES</b> <sup>[2]</sup> - 1:1, 1:12 <b>status</b> <sup>[10]</sup> - 4:3, 4:5, 4:21, 5:1, 5:5, 5:15,</p>	<p>5:16, 6:9, 6:10, 13:22 <b>STATUS</b> <sup>[1]</sup> - 1:5 <b>stenography</b> <sup>[1]</sup> - 1:24 <b>step</b> <sup>[1]</sup> - 12:11 <b>still</b> <sup>[2]</sup> - 4:12, 5:20 <b>Street</b> <sup>[1]</sup> - 1:9 <b>STREET</b> <sup>[3]</sup> - 1:16, 1:19, 2:3 <b>stressful</b> <sup>[1]</sup> - 10:8 <b>strongly</b> <sup>[1]</sup> - 10:22 <b>submitted</b> <sup>[1]</sup> - 5:5 <b>suffering</b> <sup>[1]</sup> - 12:20 <b>suggested</b> <sup>[1]</sup> - 11:1 <b>SUSAN</b> <sup>[2]</sup> - 2:3, 2:9</p>
<p><b>P</b></p> <p><b>P.A</b> <sup>[1]</sup> - 2:2 <b>p.m</b> <sup>[3]</sup> - 1:10, 3:3, 14:25 <b>P.O</b> <sup>[1]</sup> - 1:20 <b>pandemic</b> <sup>[3]</sup> - 3:21, 3:22, 7:25 <b>Parfitt</b> <sup>[2]</sup> - 3:12, 10:6 <b>PARFITT</b> <sup>[11]</sup> - 1:16, 4:15, 4:22, 4:25, 5:18, 5:22, 6:15, 8:12, 8:25, 9:4, 14:7 <b>PARK</b> <sup>[1]</sup> - 2:10 <b>part</b> <sup>[1]</sup> - 6:8 <b>participate</b> <sup>[2]</sup> - 10:3, 10:15 <b>participating</b> <sup>[3]</sup> - 3:7, 3:10, 3:14 <b>particular</b> <sup>[2]</sup> - 8:15, 9:25 <b>particularly</b> <sup>[3]</sup> - 11:23, 12:19, 12:21 <b>pat</b> <sup>[1]</sup> - 4:1 <b>patent</b> <sup>[1]</sup> - 8:1 <b>PATRICIA</b> <sup>[1]</sup> - 1:19 <b>PC</b> <sup>[1]</sup> - 2:5 <b>pending</b> <sup>[1]</sup> - 5:16 <b>people</b> <sup>[5]</sup> - 3:4, 3:6, 3:8, 5:25, 11:12 <b>perhaps</b> <sup>[4]</sup> - 4:6, 5:1, 8:13, 13:15 <b>perspectives</b> <sup>[1]</sup> - 12:19 <b>phase</b> <sup>[1]</sup> - 13:20 <b>phone</b> <sup>[3]</sup> - 12:2, 12:7, 13:3 <b>phones</b> <sup>[1]</sup> - 12:1 <b>physicians</b> <sup>[1]</sup> - 13:21 <b>Pisano</b> <sup>[9]</sup> - 4:13, 10:18, 11:6, 11:15, 11:21, 12:4, 12:10,</p>	<p><b>Q</b></p> <p><b>quality</b> <sup>[1]</sup> - 11:13 <b>quarantine</b> <sup>[1]</sup> - 11:8 <b>quickly</b> <sup>[1]</sup> - 7:7 <b>quite</b> <sup>[1]</sup> - 9:24</p>	<p><b>S</b></p> <p><b>safe</b> <sup>[1]</sup> - 14:22 <b>safely</b> <sup>[1]</sup> - 8:21 <b>safety</b> <sup>[4]</sup> - 10:1, 10:6,</p>	<p><b>T</b></p> <p><b>TALCUM</b> <sup>[1]</sup> - 1:4 <b>tech</b> <sup>[2]</sup> - 8:7, 8:18 <b>tech-savvy</b> <sup>[1]</sup> - 8:18 <b>technology</b> <sup>[3]</sup> - 9:9, 10:3, 10:10 <b>terminated</b> <sup>[1]</sup> - 6:24 <b>terrific</b> <sup>[1]</sup> - 3:23 <b>THE</b> <sup>[21]</sup> - 1:1, 1:12, 3:4, 4:16, 4:24, 5:17, 5:19, 6:10, 6:20, 7:15, 7:20, 7:21, 7:24, 8:22, 9:2, 11:20, 13:9, 14:1, 14:4, 14:6, 14:9 <b>themselves</b> <sup>[1]</sup> - 8:18 <b>thinking</b> <sup>[1]</sup> - 4:5 <b>three</b> <sup>[6]</sup> - 3:24, 8:2, 10:17, 10:25, 11:1, 11:16 <b>timeline</b> <sup>[1]</sup> - 7:9 <b>timelines</b> <sup>[1]</sup> - 7:3 <b>timely</b> <sup>[1]</sup> - 5:4 <b>today</b> <sup>[4]</sup> - 4:4, 4:21, 7:12, 14:19 <b>toes</b> <sup>[1]</sup> - 12:11 <b>tons</b> <sup>[1]</sup> - 8:6 <b>touch</b> <sup>[1]</sup> - 14:14 <b>transcript</b> <sup>[2]</sup> - 1:24, 15:3 <b>transcription</b> <sup>[1]</sup> - 1:25 <b>Trenton</b> <sup>[1]</sup> - 1:9 <b>trial</b> <sup>[2]</sup> - 3:25, 8:1 <b>trying</b> <sup>[2]</sup> - 7:3, 7:6 <b>Tuesday</b> <sup>[1]</sup> - 14:5 <b>turn</b> <sup>[1]</sup> - 3:5 <b>two</b> <sup>[3]</sup> - 7:8, 10:17, 11:16</p>	

<b>U</b>	<b>Z</b>
<b>U.S</b> <sup>[1]</sup> - 1:8 <b>underlying</b> <sup>[1]</sup> - 12:21 <b>United</b> <sup>[1]</sup> - 3:2 <b>UNITED</b> <sup>[2]</sup> - 1:1, 1:12 <b>universe</b> <sup>[1]</sup> - 14:16 <b>unless</b> <sup>[1]</sup> - 13:14 <b>unopposed</b> <sup>[1]</sup> - 5:10 <b>up</b> <sup>[6]</sup> - 4:13, 5:23, 6:3, 10:9, 13:10, 14:9	<b>ZOOM</b> <sup>[1]</sup> - 1:6 <b>Zoom</b> <sup>[3]</sup> - 3:1, 6:12, 11:8
<b>V</b>	
<b>vaccine</b> <sup>[1]</sup> - 13:24 <b>variety</b> <sup>[1]</sup> - 10:24 <b>various</b> <sup>[1]</sup> - 4:17 <b>via</b> <sup>[1]</sup> - 3:1 <b>VIA</b> <sup>[1]</sup> - 1:5 <b>video</b> <sup>[2]</sup> - 3:6, 10:6 <b>VIDEOCONFERENC</b> <b>E</b> <sup>[1]</sup> - 1:6 <b>videoconference</b> <sup>[1]</sup> - 3:1 <b>Vinnie</b> <sup>[2]</sup> - 3:21, 3:22 <b>Vinnie's</b> <sup>[1]</sup> - 7:17 <b>virtual</b> <sup>[2]</sup> - 3:25, 8:16 <b>virtually</b> <sup>[1]</sup> - 8:10 <b>voice</b> <sup>[1]</sup> - 6:11	
<b>W</b>	
<b>WASHINGTON</b> <sup>[2]</sup> - 1:17, 2:15 <b>waste</b> <sup>[1]</sup> - 5:7 <b>Wayne</b> <sup>[1]</sup> - 6:12 <b>ways</b> <sup>[1]</sup> - 12:12 <b>wear</b> <sup>[1]</sup> - 12:16 <b>wearing</b> <sup>[2]</sup> - 11:12, 12:13 <b>week</b> <sup>[2]</sup> - 5:3, 14:4 <b>weeks</b> <sup>[2]</sup> - 5:25, 14:12 <b>wild</b> <sup>[1]</sup> - 13:4 <b>WILMINGTON</b> <sup>[1]</sup> - 2:4 <b>wish</b> <sup>[1]</sup> - 8:4 <b>WOLFSON</b> <sup>[1]</sup> - 1:12 <b>Wolfson</b> <sup>[1]</sup> - 3:2 <b>workplace</b> <sup>[1]</sup> - 13:3 <b>works</b> <sup>[1]</sup> - 13:4 <b>worst</b> <sup>[1]</sup> - 12:1 <b>wrote</b> <sup>[1]</sup> - 11:3	
<b>Y</b>	
<b>year</b> <sup>[1]</sup> - 13:23 <b>YORK</b> <sup>[1]</sup> - 2:14	